

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

GEORGIA ANDERSON, et al

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 4:02CV55-P-B

FIRST FAMILY FINANCIAL SERVICES, INC., et al

DEFENDANTS

ORDER

This cause is before the Court on the defendant's Motion for Summary Judgment as to Certain Plaintiffs [147-1]. The Court, having reviewed the motion, the defendant's brief,¹ the authorities cited and being otherwise fully advised in the premises, finds as follows, to-wit:

Defendants seek summary judgment on grounds of judicial estoppel based on the failure of certain plaintiffs² to schedule or otherwise disclose their claims against First Family Financial Services, Inc. (hereafter First Family) during the pendency of their bankruptcy cases. Each of said plaintiffs sought protection under either Chapter 7 or Chapter 13 of the bankruptcy code immediately prior to the filing of the Complaint or sometime during the pendency of this action.³ In reliance on

¹ Plaintiffs failed to file a response in opposition to the instant motion.

² The plaintiffs targeted by this motion are Albert J. Bell, Patricia Butler, Jestine Cummings, Bobby Fair, Vivian O. Hearvey, Donnie Ray Jackson, Joanna Jackson (aka Joanna Jackson Taylor), Brenda Lee Powell Johnson, Bobby Patton, Flora Person, Flora Singleton, Janet Tripplett, Ora Ward, Jennie Ware, Neal Warren, Georgia G. Washington and King David Watkins.

³ Plaintiffs initiated this lawsuit by filing a complaint on February 20, 2002. Plaintiffs filed their petitions in bankruptcy and received a discharge/confirmed their plans on the following dates:

the plaintiffs' disclosures, the bankruptcy court granted discharges and/or confirmed Chapter 13 plans for each of the plaintiffs. Suber received a discharge on August 6, 2003, and the bankruptcy case was closed on January 31, 2004.

Judicial estoppel is an equitable doctrine which prevents a party from asserting inconsistent positions in legal proceedings. In re Coastal Plains, 179 F.3d 197, 205 (5th Cir. 1999). Id. The doctrine has been employed to prevent parties from pursuing legal claims when the parties fail to disclose those claims in bankruptcy proceedings. Casey v. Peco Foods, 297 B.R. 73 (S.D. Miss. 2003). Debtors in a bankruptcy proceeding have a duty to disclose all assets, including contingent and unliquidated claims. 11 U.S.C. § 521(1). Furthermore, in a Chapter 13 bankruptcy proceeding, all assets of the debtor belong to the estate, including interest in property acquired after the commencement of the estate. 11 U.S.C. § 541(a)(7). Thus, the duty of disclosure in bankruptcy

	Bankruptcy Petition	Discharge/Confirmation
Albert J. Bell:	June 14, 2004	September 20, 2004
Patricia Butler	January 18, 2002	June 7, 2002
Jestine Cummings	June 7, 2004	October 5, 2004
Bobby Fair	March 25, 2002	July 24, 2002
Vivian O. Hearvey	March 22, 2004	July 23, 2004
Donnie Ray Jackson	November 27, 2002	March 19, 2003
Joanna Jackson (Taylor)	May 20, 2002	September 17, 2002
Brenda Lee Powell Johnson	December 8, 2003	June 23, 2004
Bobby Patton	May 12, 2004	August 17, 2004
Flora Person	January 16, 2003	April 24, 2003
Flora Singleton	November 14, 2001	April 9, 2002
Janet Triplett	December 2, 2002	March 18, 2003
Ora L. Ward	November 24, 2003	March 11, 2004
Jennie M. Ware	July 28, 2004	December 2, 2004
Neal R. Warren	August 30, 2004	January 31, 2005
Georgia G. Washington	July 7, 2003	October 24, 2003
King David Watkins	March 4, 2002	May 10, 2002

proceedings is a continuing one. Coastal Plains, 179 F.3d at 208.

Judicial estoppel applies when two elements are present: 1) the position of the party to be estopped is clearly inconsistent with its previous one; and 2) that party must have convinced the court to accept the previous position. Based on Fifth Circuit precedent, Coastal Plains, 179 F.3d at 210, the Court has no choice but to conclude that the first element, that of inconsistent positions, has been satisfied. The plaintiffs' claims are based on loan transactions that arose prepetition. This was sufficient to trigger the plaintiffs' duty to disclose the potential claims to the bankruptcy court. Notwithstanding that fact, each of the plaintiffs represented to the bankruptcy court that they had no potential causes of action against First Family, a position which is clearly inconsistent with his subsequent filing of a complaint in the Circuit Court of Washington County on February 20, 2002. Casey, 297 B.R. at 77.

Moreover, the second element has been satisfied as well. It is evident that the bankruptcy court relied on plaintiffs' schedules in granting discharges and/or approving proposed Chapter 13 plans.

Plaintiffs can avoid judicial estoppel only if they can establish that their nondisclosure was inadvertent. A debtor's "failure to satisfy its statutory disclosure duty is 'inadvertent' only when, in general, the debtor either lacks knowledge of the undisclosed claims *or* has no motive for their concealment." Coastal Plains, 179 F.3d at 210 (emphasis in original). Plaintiffs cannot credibly claim to have lacked knowledge of the lawsuit or the claims they assert against First Family; nor can they disavow any motive to conceal their claims. See Burnes v. PEMCO Aeroplex, Inc., 291 F.3d 1281 (11th Cir. 2002).

By failing to disclose their potential causes of action against First Family to the bankruptcy court, plaintiffs have been able to secure a discharge in bankruptcy and keep the full benefit of any potential recovery on the cause of action for themselves, precisely the result that the doctrine of judicial estoppel is intended to prevent. In re Superior Crewboats, Inc., 374 F.3d 330, 335 (5th Cir. 2004) (quoting from Payless Wholesale Distrib., Inc. v. Alberto Culver (P.R.) Inc., 989 F.2d 570, 571 (1st Cir. 1993)). The Court concludes that the doctrine of judicial estoppel operates as a bar to plaintiffs' continued prosecution of this case; accordingly, the defendant's motion is well-taken and should be granted.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the defendant's Motion for Summary Judgment [147-1] is well-taken and should be, and hereby is, GRANTED. IT IS FURTHER ORDERED that the claims of Albert J. Bell, Patricia Butler, Jestine Cummings, Bobby Fair, Vivian O. Hearvey, Donnie Ray Jackson, Joanna Jackson (aka Joanna Jackson Taylor), Brenda Lee Powell Johnson, Bobby Patton, Flora Person, Flora Singleton, Janet Tripplett, Ora Ward, Jennie Ware, Neal Warren, Georgia G. Washington and King David Watkins. should be, and hereby are, DISMISSED WITH PREJUDICE.

SO ORDERED, this the 27th day of January, 2006.

/s/ W. Allen Pepper, Jr. _____
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE